



California Fair Political Practices Commission

May 22, 1989

Teresa Craigie, Esq.
Pillsbury, Madison & Sutro
225 Bush Street
P.O. Box 7880
San Francisco, CA 94120

Re: Your Request for Advice
Our File No. A-89-187

Dear Ms. Craigie:

This is to confirm our telephone conversation on April 28, 1989, in which we discussed your request for advice on behalf of the New United Motor Manufacturing Political Action Committee - California Fund (the "Fund"). Our conversation concerned the status of the Fund in light of the amendments made to the Political Reform Act¹ (the "Act") by Proposition 73. The substance of our conversation is set forth below.

QUESTIONS

1. Does the Fund qualify as a "recipient committee"?
2. Is there a limit on how much money the Fund can receive from New United Motor Manufacturing, Inc. (the "Company")?
3. What contribution limits apply to contributions by the Fund?
4. Can the Fund spend the monies it had on hand on January 1, 1989 in connection with state and local elections held in 1989 and thereafter?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq.

CONCLUSIONS

1. The fund does not qualify as a "recipient committee." Depending on the amount and nature of contributions it makes each year it may, however, qualify as a "major donor" committee under the Act.²

2. Under the current facts, there is no limit to the amount of money that the Fund may receive from the Company.

3. The Fund and the Company are considered to be a "person" for purposes of the Act's contribution limits. Therefore, as one entity, they may contribute up to \$1,000 to individual candidates and \$2,500 to individual political committees, broad based political committees or political parties in a fiscal year.

4. The Fund may spend the monies it had-on hand on January 1, 1989 in connection with state and local elections held in 1989 and thereafter.

FACTS

The Fund makes campaign contributions and is currently registered with the Secretary of State as a "recipient committee," pursuant to Section 82013(a). The Fund's statement of organization indicates it is a "sponsored committee" under Section 82048.7. The Fund operates under articles of association and is a distinct legal entity from the Company. However, the Company is the sole source of funding for the Fund.

ANALYSIS

Under the Act, entities are classified as "committees" for two purposes. One is to ensure proper campaign disclosure pursuant to Chapter 4 (encompassing Sections 84100 through 84400). The other is to limit campaign contributions pursuant to Chapter 5 (encompassing Sections 85100 through 85700).

Section 82013 defines a "committee" as any person or combination of persons who directly or indirectly do any of the following:

- (a) Receives contributions totalling one thousand dollars (\$1,000) or more in a calendar year;

² Because of the significant policy question presented by this issue, we have provided a cautious and conservative interpretation of the Act. This letter will be provided to the Commission for consideration at a meeting in the near future. We will inform you if the Commission directs us to change our advice.

(b) Makes independent expenditures totalling one thousand dollars (\$1,000) or more in a calendar year; or

(c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

Committees meeting the definition of subdivision (a) of Section 82013 are commonly known as "recipient committees." Under the facts presented, the Fund arguably meets the definition of "recipient committee" because it receives payments for political purposes³ from the Company.

However, the Fund was formed by the Company, and the Company is the sole source of its funding. In such circumstances, we view the Fund and the Company as the same entity for purposes of the Act. Thus, the Fund cannot meet the definition of "recipient committee" set forth in Section 82013(a) because an entity cannot "receive" contributions from itself. Therefore, the Fund and Company, depending on the nature and amount of their contributions or expenditures, will fall under the definitions of "independent expenditure committee" under Section 82013(b) or "major donor committee" under Section 82013(c).

For purposes of the contribution limitations under Chapter 5, a "committee" is classified in one of three ways. It can be a "person," a "political committee" or a "broad based political committee." (Section 85102.) To be classified as political or broad based, a committee must receive contributions from at least two persons. As mentioned above, the Commission finds the Fund and the Company to be the same entity for purposes of the Act. Under the facts presented, no external persons or entities make contributions to the Fund or the Company. Therefore, neither the Fund nor the Company is a political committee or broad based political committee for purposes of the contribution limitations under Chapter 5. Instead, they are one "person," pursuant to the definition set forth in Section 85102(b).⁴

Section 85301 of the Act prohibits persons from making contributions to a candidate in excess of \$1,000 in any fiscal year. Section 85302 prohibits persons from making contributions

³ Section 82015 defines "contribution" as "...a payment...unless it is clear from the surrounding circumstances that it is not made for political purposes...."

⁴ Section 85102(b) defines a "person" as "...an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization."

to any political committee, broad based political committee or political party in excess of \$2,500 in any fiscal year. As a "person," the Fund and the Company are subject to these limitations and must adhere to them as if they were a single entity. However, because the Fund and the Company are the same entity, the Company is also not limited in how much money it can give to the Fund in a fiscal year.

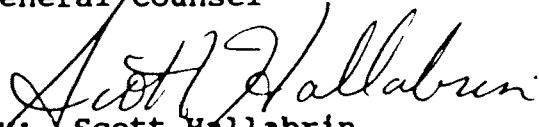
You also ask whether the Fund, which had cash on hand on January 1, 1989 that was provided solely by the Company, can spend these funds to support or oppose candidates for elective office. Section 85306 prohibits candidates and committees from using pre-1989 contributions to support or oppose candidates for office on or after January 1, 1989. However, as stated above, the Company is not considered to have made contributions to the Fund because they are the same entity. Therefore, the Fund may use the cash it had on hand on January 1, 1989 to support or oppose candidates for elective office.

Finally, assuming that the Commission ultimately agrees with this advice, you inquire as to the manner in which the Fund should proceed, since it apparently has been mistakenly registered and filing campaign statements with the Secretary of State as a "recipient committee" for some time. Since, under the Act, a "recipient committee" must disclose more information than the other types of committees set forth under Section 82013, we see no need for the Fund and Company to amend previous disclosure statements to reflect the Fund's correct status. Instead, we recommend that the Fund terminate its status as a "recipient committee," pursuant to Section 84214, with an explanation that it never qualified as such. Thereafter, the Company should file statements, as appropriate, as a "major donor committee" (Section 82013(c)) under the name of the Company and not under the name of the Fund.

Should you have further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

KED:SH:ld

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March 28, 1989

New United Motor Manufacturing
Political Action Committee
California Fund - Miscellaneous -
Political Action Committee

VIA FEDERAL EXPRESS

Ms. Katherine E. Donovan
Counsel
Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Kathy:

This is a request for written advice pursuant to
Government Code Section 83114(b).

This firm represents the New United Motor Manufacturing, Inc. Political Action Committee - California Fund (the "PAC"). The PAC is registered as a "recipient committee" and files periodic campaign statements under the campaign disclosure provisions of the Political Reform Act of 1974, as amended. It also is a "sponsored committee" under Government Code Sections 82048.7 and 84106. It operates pursuant to articles of association, and is a separate and distinct legal entity. New United Motor Manufacturing, Inc. (the "Company") is the sole source of funds for the PAC. The Company most recently contributed to the PAC on December 21, 1987.

Because the PAC has only one contributor, we conclude that it qualifies as neither a "political committee" nor a "broad based political committee." Gov't. Code § 85102. Moreover, since it is neither a broad based political committee nor a political committee, there are no dollar limits applicable

Ms. Katherine E. Donovan
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to contributions to the PAC. Gov't. Code § 85302. However, since the PAC is a "committee" (Gov't. Code § 82013), it is a "person" and, as such, is limited to contributions of no more than \$1,000 per fiscal year to a candidate for state or local office (Gov't. Code § 85301(a)) or \$2,500 per fiscal year to a political committee (Gov't. Code § 85302).

Although the PAC had funds on hand on January 1, 1989 (the operative date of the limitation provisions of Government Code Sections 85300-85307), it did not "cleanse" the funds on hand pursuant to 2 Cal.Admin.Code § 18536.1 because all of its funds complied with the limitation provisions of the Act.

In light of the foregoing, we request confirmation of the following:

1. That the PAC continues to qualify as a recipient committee under Section 82013(a);
2. Since the PAC qualifies as neither a political committee nor a broad based political committee, there is no limit on the amount the Company (as its sole source of funds) may contribute to the PAC.
3. The PAC is a "person" and as such is subject to the campaign contribution limitations of Gov't. Code §§ 85301(a), 85302, 85303(c) and 85305(c)(1);
4. Since the PAC is not subject to dollar limitations imposed by Government Code §§ 85300-85307 the PAC may continue to spend its funds on hand in connection with state and local elections.

Thank you for your attention to this matter.

Very truly yours,


Teresa Craigie



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California Fair Political Practices Commission

March 30, 1989

Teresa Craigie
Pillsbury, Madison & Sutro
225 Bush Street
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San Francisco, CA 94120

Re: Letter No. 89-187

Dear Ms. Craigie:

Your letter requesting advice under the Political Reform Act was received on March 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh